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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**OUTERBRIDGE ACCESS
ASSOCIATION, SUING ON BEHALF
OF DIANE CROSS; and DIANE
CROSS, An Individual,**

Plaintiffs,

v.

**MARIE CALLENDER'S PIE SHOPS,
INC. d.b.a. MARIE CALLENDER'S
#254; PACIFIC BAGELS, LLC
d.b.a. BRUEGGARS BAGELS;
COURTYARD HOLDINGS, LP; PSS
PARTNERS, LLC; AND DOES 1
THROUGH 10, Inclusive,**

Defendants.

Case No. **07 CV 2129 BTM (AJB)**

COMPLAINT

CLASS ACTION

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1,
54.3]**

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b)]

INTRODUCTION

1. Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS AND ITS MEMBERS; and DIANE CROSS, An Individual,
herein complain, by filing this Civil Complaint in accordance with
rule 8 of the Federal Rules of Civil Procedure in the Judicial

CR

1 District of the United States District Court of the Southern
2 District of California, that Defendants have in the past, and
3 presently are, engaging in discriminatory practices against
4 individuals with disabilities, specifically including minorities
5 with disabilities. Plaintiffs allege this civil action and others
6 substantial similar thereto are necessary to compel access
7 compliance because empirical research on the effectiveness of
8 Title III of the Americans with Disabilities Act indicates this
9 Title has failed to achieve full and equal access simply by the
10 executive branch of the Federal Government funding and promoting
11 voluntary compliance efforts. Further, empirical research shows
12 when individuals with disabilities give actual notice of potential
13 access problems to places of public accommodation without a
14 federal civil rights action, the public accommodations do not
15 remove the access barriers. Therefore, Plaintiffs make the
16 following allegations in this federal civil rights action:

17 **JURISDICTION AND VENUE**

18 2. The federal jurisdiction of this action is based on the
19 Americans with Disabilities Act, 42 United States Code 12101-
20 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
21 District of the United States District Court of the Southern
22 District of California is in accordance with 28 U.S.C. § 1391(b)
23 because a substantial part of Plaintiffs' claims arose within the
24 Judicial District of the United States District Court of the
25 Southern District of California.

26 **SUPPLEMENTAL JURISDICTION**

27 3. The Judicial District of the United States District Court of
28

1 the Southern District of California has supplemental jurisdiction
2 over the state claims as alleged in this Complaint pursuant to 28
3 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
4 in this action is because all the causes of action or claims
5 derived from federal law and those arising under state law, as
6 herein alleged, arose from common nucleus of operative facts. The
7 common nucleus of operative facts, include, but are not limited
8 to, the incidents where Plaintiffs were denied full and equal
9 access to Defendants' facilities, goods, and/or services in
10 violation of both federal and state laws when they attempted to
11 enter, use, and/or exit Defendants' facilities as described below
12 within this Complaint. Further, due to this denial of full and
13 equal access, OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
14 DIANE CROSS and DIANE CROSS, An Individual, and other persons with
15 disabilities were injured. Based upon the said allegations, the
16 state actions, as stated herein, are so related to the federal
17 actions that they form part of the same case or controversy and
18 one would ordinarily expect the actions to be tried in one
19 judicial proceeding.

20 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

21 4. Defendants are, and, at all times mentioned herein, were, a
22 business or corporation or franchise organized and existing and/or
23 doing business under the laws of the State of California.
24 Plaintiff is informed and believes and thereon alleges that
25 Defendant MARIE CALLENDER'S PIE SHOPS, INC. is the owner,
26 operator, franchiser, licensor, and/or is doing business as MARIE
27 CALLENDER'S #254. Defendant MARIE CALLENDER'S PIE SHOPS, INC.
28

1 d.b.a. MARIE CALLENDER'S #254 is located at 11122 Rancho Carmel
2 Drive, San Diego, California 92128, Assessor Parcel Number: 313-
3 730-38. Plaintiff is informed and believes and thereon alleges
4 that Defendant PACIFIC BAGELS, LLC is the owner, operator,
5 franchiser, licensor, and/or is doing business as BRUEGGARS
6 BAGELS. Defendant PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS is
7 located at 11134 Rancho Carmel Drive, San Diego, California 92128,
8 Assessor Parcel Number: 313-042-04. Plaintiff is informed and
9 believes and thereon alleges that Defendant COURTYARD HOLDINGS, LP
10 is the owner, operator, and/or lessor of the real property located
11 at 11122 Rancho Carmel Drive, San Diego, California 92128,
12 Assessor Parcel Number: 313-730-38. Defendant COURTYARD HOLDINGS,
13 LP is located at 601 Thirteenth Street, Suite 450, Washington, DC
14 20005. Plaintiff is informed and believes and thereon alleges that
15 Defendant PSS PARTNERS, LLC is the owner, operator, and/or lessor
16 of the real property located at 11134 Rancho Carmel Drive, San
17 Diego, California 92128, Assessor Parcel Number: 313-042-04.
18 Defendant PSS PARTNERS, LLC is located at 14358 Trailwind Road,
19 Poway, California 92064.

20 5. The words Plaintiff, Plaintiffs, Plaintiff's Member, and
21 Plaintiff's Members as used herein specifically include
22 OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS and
23 DIANE CROSS, An Individual.

24 6. Defendants Does 1 through 10, were at all times relevant
25 herein subsidiaries, employers, employees, agents, of MARIE
26 CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; PACIFIC
27 BAGELS, LLC d.b.a. BRUEGGARS BAGELS; COURTYARD HOLDINGS, LP; and
28

1 PSS PARTNERS, LLC. Plaintiffs are ignorant of the true names and
2 capacities of Defendants sued herein as Does 1 through 10,
3 inclusive, and therefore sue these Defendants by such fictitious
4 names. Plaintiffs will pray leave of the court to amend this
5 complaint to allege the true names and capacities of the Does when
6 ascertained.

7 7. Plaintiffs are informed and believe, and thereon allege, that
8 Defendants and each of them herein were, at all times relevant to
9 the action, the owner, lessor, lessee, franchiser, franchisee,
10 general partner, limited partner, agent, employee, representing
11 partner, or joint venturer of the remaining Defendants and were
12 acting within the course and scope of that relationship.

13 Plaintiffs are further informed and believe, and thereon allege,
14 that each of the Defendants herein gave consent to, ratified,
15 and/or authorized the acts alleged herein to each of the remaining
16 Defendants.

17 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO**
18 **ALL DEFENDANTS**

19 8. Plaintiffs are members of a group within the State of
20 California composed of persons with a wide range of disabilities,
21 limited to persons who use wheelchairs for mobility, who must be
22 able to access retail merchandise establishments, like Defendants'
23 establishments located at 11122 Rancho Carmel Drive, San Diego,
24 California 92128, Assessor Parcel Number: 313-730-38, and 11134
25 Rancho Carmel Drive, San Diego, California 92128, Assessor Parcel
26 Number: 313-042-04. Plaintiffs are precluded from equal access to
27 Defendants' establishments so meaningfully because the
28

1 establishments, and each of them, fail to provide access for
2 members of the disability community who use a wheelchair for
3 mobility to the disabled parking, exterior path of travel,
4 entrance, food service counter, and women's restroom and seating
5 within the facilities. The Supreme Court of the United States has
6 held as long as the class representative provides adequate
7 representation for the class' interests, the court has the power
8 to adjudicate the rights and obligations of all class members -
9 even those who would otherwise be beyond the reach of its personal
10 jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985).
11 This case stands for the proposition that minimum contacts are not
12 required with nonresident members of a plaintiff class because,
13 "the burdens placed by a State upon absent class action plaintiff
14 are not of the same order or magnitude as those it places on an
15 absent defendant." Id. Plaintiffs allege they will insure class
16 members shall receive adequate notice of the proceedings and the
17 opportunity to "opt out," if required

18 9. Defendants have conducted themselves such as to establish a
19 pattern and practice of architectural discrimination. Plaintiffs
20 allege that Defendants have control over each and every facility,
21 establishment, and/or business located within the property located
22 at 11122 Rancho Carmel Drive, San Diego, California 92128,
23 Assessor Parcel Number: 313-730-38, and 11134 Rancho Carmel Drive,
24 San Diego, California 92128, Assessor Parcel Number: 313-042-04.
25 Accordingly, Plaintiffs allege Defendants are responsible for
26 removing architectural barriers at Defendants' facilities and the
27 establishments/businesses contained therein.
28

1 10. For the aforementioned reasons, Plaintiffs allege they are
2 proper class representatives for members of the disability
3 community who use a wheelchair for mobility because the members of
4 the disability community who use a wheelchair for mobility are so
5 numerous that joinder is impracticable due to the fact more than
6 one hundred (100) persons fall within the membership description.
7 Also, the questions of law or fact are so common because the
8 members of the disability community who use a wheelchair for
9 mobility are being denied their civil rights under federal and
10 state laws - that is, each member of the disability community who
11 use a wheelchair for mobility suffered substantially similar
12 violations relating to the disabled parking, exterior path of
13 travel, entrance, food service counter, and women's restroom and
14 seating within the facility. Further, the claims or defenses of
15 the representative parties are typical - Plaintiffs have the right
16 to access facilities, establishments, and businesses like those
17 within the property located at 11122 Rancho Carmel Drive, San
18 Diego, California 92128, Assessor Parcel Number: 313-730-38, and
19 11134 Rancho Carmel Drive, San Diego, California 92128, Assessor
20 Parcel Number: 313-042-04, and the businesses that are located
21 thereon for many reasons including without limitation the purchase
22 of retail merchandise. Defendants' facilities are open to the
23 general public and Plaintiffs have been denied access because of
24 violations, as outlined above and specifically addressed elsewhere
25 within this Civil Complaint.

26 11. Additionally, Plaintiffs, as the named representatives, will
27 fairly and adequately represent the interests of the class because
28

1 Plaintiffs and the members of the disability community in the
2 State of California who use a wheelchair for mobility have
3 suffered substantially similar violations. Finally, a pattern and
4 practice exists on the part of Defendants, and each of them, of
5 architectural discrimination at their public facilities located
6 within the State of California. On information and good faith
7 belief, Plaintiffs thereon allege that Defendants, prior to the
8 passing of the Americans With Disabilities Act in 1992, conceived,
9 commissioned, designed, and implemented among other things, a
10 design for their public facilities, including, but not limited to
11 the disabled parking, exterior path of travel, entrance, food
12 service counter, and women's restroom and seating within the
13 facility which do not meet the minimal standards outlined under
14 the federal regulations known as the Americans With Disabilities
15 Act Accessibility Guidelines ("ADAAG") and state regulations, also
16 known as Title 24 of the California Building Code, and to which
17 non-compliant plan they continue to utilize to the injury of the
18 members of the class. For these reasons and the facts as stated
19 herein, Plaintiffs have the right to maintain this statewide class
20 action pursuant to Fed.R.Civ.P. Rule 23(b).

21 **CONCISE SET OF FACTS**

22 12. Plaintiff OUTERBRIDGE ACCESS ASSOCIATION is an organization
23 that advocates on the behalf of its members with disabilities when
24 their civil rights and liberties have been violated. Plaintiff's
25 member DIANE CROSS is a member of Plaintiff Organization and has
26 physical impairments and due to these physical impairments she has
27 learned to successfully operate a wheelchair. Further,
28

1 Plaintiff's Member and Plaintiff DIANE CROSS' said physical
2 impairments substantially limits one or more of the following
3 major life activities including but not limited to: walking.
4 13. On November 11, 2006, Plaintiff CROSS went to Defendants'
5 public accommodation facilities known as MARIE CALLENDER'S PIE
6 SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; PACIFIC BAGELS, LLC
7 d.b.a. BRUEGGARS BAGELS; COURTYARD HOLDINGS, LP; PSS PARTNERS,
8 LLC, located at 11122 Rancho Carmel Drive, San Diego, California
9 92128, Assessor Parcel Number: 313-730-38, and 11134 Rancho Carmel
10 Drive, San Diego, California 92128, Assessor Parcel Number: 313-
11 042-04, to utilize their goods and/or services accompanied by a
12 friend. When Plaintiff CROSS patronized Defendants' facilities,
13 she was unable to use and/or had difficulty using the public
14 accommodations' facilities within the common area including but
15 not limited to the disabled parking and exterior path of travel,
16 as said were not accessible because they failed to comply with ADA
17 Access Guidelines For Buildings and Facilities (hereafter referred
18 to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
19 California's Title 24 Building Code Requirements. Defendants
20 failed to remove barriers to equal access within the common area
21 in which the public accommodation facilities known as MARIE
22 CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; and
23 PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS are located.
24 14. Plaintiff CROSS personally experienced difficulty with said
25 access barriers within the common area in which the public
26 accommodation facilities known as MARIE CALLENDER'S PIE SHOPS,
27 INC. d.b.a. MARIE CALLENDER'S #254, (hereinafter "MARIE
28

1 CALLENDER'S #254"), and PACIFIC BAGELS, LLC d.b.a. BRUEGGARS
2 BAGELS, (hereinafter "BRUEGGARS BAGELS"), are located. The
3 following examples of known barriers to access are not an
4 exhaustive list of the barriers to access that exist within the
5 common area of Defendants' facilities. For example, a "Van
6 Accessible" disabled parking space is located directly in front of
7 Pearle Vision, which is near MARIE CALLENDER'S #254; and BRUEGGARS
8 BAGELS. The access aisle for this "Van Accessible" disabled
9 parking space fails to be compliant, as a ramp impermissibly
10 encroaches into the access aisle. There are two (2) designated
11 disabled parking spaces directly serving MARIE CALLENDER'S #254.
12 The access aisle in between these two spaces fails to be
13 accessible, as a ramp impermissibly encroaches into this access
14 aisle. There is also a "Van Accessible" disabled parking space
15 located in the middle of the parking lot. This space fails to be
16 accessible, as it fails to provide an accessible route to any
17 of the facilities entrance located within the complex. Patrons
18 using this space would be forced to transverse through vehicular
19 traffic without the benefit of a marked path of travel.

20 15. When Plaintiff CROSS patronized Defendants' MARIE CALLENDER'S
21 #254 facilities, she was unable to use and/or had difficulty using
22 the public accommodations' facilities including but not limited to
23 the entrance, food service counter, and women's restroom, as said
24 were not accessible because they failed to comply with ADA Access
25 Guidelines For Buildings and Facilities (hereafter referred to as
26 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
27 California's Title 24 Building Code Requirements. Defendants
28

1 failed to remove barriers to equal access within the public
2 accommodation facilities known as MARIE CALLENDER'S #254.

3 16. Plaintiff CROSS personally experienced difficulty with said
4 access barriers at MARIE CALLENDER'S #254. The following examples
5 of known barriers to access are not an exhaustive list of the
6 barriers to access that exist at Defendants' facilities. For
7 example, the entrance to MARIE CALLENDER'S #254 fails to display
8 the required International Symbol of Accessibility. The salad bar
9 fails to be accessible, as condiments fail to be located within
10 accessible reach ranges

11 17. The entrance door to the women's restroom within MARIE
12 CALLENDER'S #254 fails to be accessible, as it requires an
13 excessive amount of pressure to open. Also, within the women's
14 restroom, the lavatory handles fail to be accessible, as they
15 require tight grasping and/or twisting of the wrist to operate.

16 18. When Plaintiff CROSS patronized Defendants' BRUEGGARS BAGELS
17 facilities, she was unable to use and/or had difficulty using the
18 public accommodations' facilities including but not limited to the
19 entrance, food service counters, women's restroom, and seating, as
20 said were not accessible because they failed to comply with ADA
21 Access Guidelines For Buildings and Facilities (hereafter referred
22 to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
23 California's Title 24 Building Code Requirements. Defendants
24 failed to remove barriers to equal access at the public
25 accommodation facilities known as BRUEGGARS BAGELS.

26 19. Plaintiff CROSS personally experienced difficulty with said
27 access barriers at BRUEGGARS BAGELS. The following examples of
28

1 known barriers to access are not an exhaustive list of the
2 barriers to access that exist at Defendants' facilities. For
3 example, the entrance to BRUEGGARS BAGELS fails to display the
4 required International Symbol of Accessibility.

5 20. The counter within BRUEGGARS BAGELS where patrons order and
6 also where the trays are kept fails to be accessible, as it is too
7 high to be accessible. There also fails to be any disability
8 signage informing disabled patrons that assistance is available
9 upon request. Also, the tableware, condiments, and napkins fail to
10 be accessible, as they fail to be located within accessible reach
11 ranges. The napkins are located impermissibly high above the trash
12 receptacle.

13 21. Within BRUEGGARS BAGELS, the women's restroom fails to be
14 accessible, as highchairs were stacked in front of the door. Also
15 within the BRUEGGARS BAGELS women's restroom, the paper towel
16 dispenser fails to be accessible, as it is mounted at an excessive
17 52" high and the toilet tissue dispenser fails to be accessible,
18 as it is mounted an impermissible 44" high.

19 22. BRUEGGARS BAGELS fails to provide any accessible seating
20 inside or outside of the facility.

21 23. Plaintiffs can prove these barriers as Plaintiffs conducted a
22 preliminary survey of Defendants' facilities. Plaintiff
23 Association alleges that its visually and hearing impaired members
24 desire to go to Defendants' facility but cannot because of lack of
25 auxiliary aids. Plaintiffs specifically allege that Defendants
26 knew, to a substantial certainty, that the architectural barriers
27 precluded wheelchair access. First, Plaintiffs will prove that
28

1 Defendants had actual knowledge that the architectural barriers
2 precluded wheelchair access and that the noncompliance with ADAAG
3 as to accessible entrances was intentional. Second, due to the
4 abundance of ADA information and constant news covers of ADA
5 lawsuits, Defendants had actual knowledge of the ADA and decided
6 deliberately not to remove architectural barriers. Third,
7 Defendants have no plans to remodel. Fourth, Defendants had
8 actual knowledge of ADA given all the ADA public awareness
9 campaigns, the abundance of free ADA information and the media's
10 constant ADA coverage. Fifth, a human being acting for the
11 defendants made a conscious decision as to how to proceed given
12 the presence of the architectural barriers. Plaintiffs allege
13 any alternative methods preclude integration of wheelchair
14 patrons, as it requires them to use a second-class entrance.
15 Also, expert testimony will show the facility contained
16 inaccessible features. Plaintiffs allege businesses often state
17 that they have few customers with disabilities. Plaintiffs allege
18 such customers avoid patronizing inaccessible business and are
19 deterred from patronizing such businesses.

20 24. Plaintiff's Member and Plaintiff DIANE CROSS intends to
21 return to Defendants' public accommodation facilities in the
22 immediate future. Plaintiffs' Member and Plaintiff DIANE CROSS is
23 presently deterred from returning due to her knowledge of the
24 barriers to access that exist at Defendants' facilities.

25 25. Pursuant to federal and state law, Defendants are required to
26 remove barriers to their existing facilities. Further, Defendants
27 had actual knowledge of their barrier removal duties under the
28

1 Americans with Disabilities Act and the Civil Code before January
 2 26, 1992. Also, Defendants should have known that individuals
 3 with disabilities are not required to give notice to a
 4 governmental agency before filing suit alleging Defendants failed
 5 to remove architectural barriers.

6 26. Based on these facts, Plaintiffs allege they were
 7 discriminated against each time they patronized Defendants'
 8 facilities. Plaintiff's Member and Plaintiff DIANE CROSS was
 9 extremely upset due to Defendants' conduct.

10 NOTICE

11 27. Plaintiffs are not required to provide notice to the
 12 defendants prior to filing a complaint. *Botosan v. Paul McNally*
 13 *Realty*, 216 F.3d 827, 832 (9th Cir 2000).
 14

15 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

16 28. MARIE CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S
 17 #254; PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS; COURTYARD
 18 HOLDINGS, LP; PSS PARTNERS, LLC; and Does 1 through 10 will be
 19 referred to collectively hereinafter as "Defendants."

20 29. Plaintiffs aver that the Defendants are liable for the
 21 following claims as alleged below:

22 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

23 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The

24 Americans With Disabilities Act Of 1990

25 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal Access

26 30. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
 27 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
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1 denied full and equal access to Defendants' goods, services,
2 facilities, privileges, advantages, or accommodations. Plaintiffs
3 allege Defendants are a public accommodation owned, leased and/or
4 operated by Defendants. Defendants' existing facilities and/or
5 services failed to provide full and equal access to Defendants'
6 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's
7 Member and Plaintiff DIANE CROSS was subjected to discrimination
8 in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
9 U.S.C. § 12188 because Plaintiff's Member and Plaintiff DIANE
10 CROSS was denied equal access to Defendants' existing facilities.

11 31. Plaintiff's Member and Plaintiff DIANE CROSS has physical
12 impairments as alleged in ¶ 12 above because her conditions affect
13 one or more of the following body systems: neurological,
14 musculoskeletal, special sense organs, and/or cardiovascular.
15 Further, Plaintiff's Member and Plaintiff DIANE CROSS' said
16 physical impairments substantially limits one or more of the
17 following major life activities: walking. In addition,
18 Plaintiff's Member and Plaintiff DIANE CROSS cannot perform one or
19 more of the said major life activities in the manner, speed, and
20 duration when compared to the average person. Moreover,
21 Plaintiff's Member and Plaintiff DIANE CROSS has a history of or
22 has been classified as having a physical impairment as required by
23 42 U.S.C. § 12102(2)(A).

24
25 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In
26 Such A Manner That The Altered Portions Of The Facility Are
27 Readily Accessible And Usable By Individuals With Disabilities
28

1 32. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
2 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
3 denied full and equal access to Defendants' goods, services,
4 facilities, privileges, advantages, or accommodations within a
5 public accommodation owned, leased, and/or operated by Defendants.
6 Defendants altered their facility in a manner that affects or
7 could affect the usability of the facility or a part of the
8 facility after January 26, 1992. In performing the alteration,
9 Defendants failed to make the alteration in such a manner that, to
10 the maximum extent feasible, the altered portions of the facility
11 are readily accessible to and usable by individuals with
12 disabilities, including individuals who use wheelchairs, in
13 violation of 42 U.S.C. §12183(a)(2).

14 33. Additionally, the Defendants undertook an alteration that
15 affects or could affect the usability of or access to an area of
16 the facility containing a primary function after January 26, 1992.
17 Defendants further failed to make the alterations in such a manner
18 that, to the maximum extent feasible, the path of travel to the
19 altered area and the bathrooms, telephones, and drinking fountains
20 serving the altered area, are readily accessible to and usable by
21 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

22 34. Pursuant to 42 U.S.C. §12183(a), this failure to make the
23 alterations in a manner that, to the maximum extent feasible, are
24 readily accessible to and usable by individuals with disabilities
25 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
26 Therefore, Defendants discriminated against Plaintiffs in
27 violation of 42 U.S.C. § 12182(a).
28

1 35. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
2 subjected to discrimination in violation of 42 U.S.C. § 12183(a),
3 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's
4 Member and Plaintiff DIANE CROSS was denied equal access to
5 Defendants' existing facilities.
6

7 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural**
8 **Barriers**

9 36. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
10 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
11 denied full and equal access to Defendants' goods, services,
12 facilities, privileges, advantages, or accommodations within a
13 public accommodation owned, leased, and/or operated by Defendants.

14 Defendants failed to remove barriers as required by 42 U.S.C. §
15 12182(a). Plaintiffs are informed, believe, and thus allege that
16 architectural barriers which are structural in nature exist within
17 the following physical elements of Defendants' facilities: Space
18 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
19 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
20 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
21 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
22 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
23 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
24 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
25 Telephones. Title III requires places of public accommodation to
26 remove architectural barriers that are structural in nature to
27 existing facilities. [See, 42 United States Code
28

1 12182(b)(2)(A)(iv).] Failure to remove such barriers and
 2 disparate treatment against a person who has a known association
 3 with a person with a disability are forms of discrimination. [See
 4 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
 5 Member and Plaintiff DIANE CROSS was subjected to discrimination
 6 in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
 7 U.S.C. § 12188 because they were denied equal access to
 8 Defendants' existing facilities.

9
 10 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**
 11 **Policies And Procedures**

12 37. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
 13 this complaint, Defendants failed and refused to provide a
 14 reasonable alternative by modifying its practices, policies and
 15 procedures in that they failed to have a scheme, plan, or design
 16 to assist Plaintiffs and/or others similarly situated in entering
 17 and utilizing Defendants' services, as required by 42 U.S.C. §
 18 12188(a). Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
 19 subjected to discrimination in violation of 42 United States Code
 20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
 21 Member and Plaintiff DIANE CROSS was denied equal access to
 22 Defendants' existing facilities.

23 38. Based on the facts plead at ¶¶ 12 - 28 above, Claims I, II,
 24 and III of Plaintiff's First Cause Of Action above, and the facts
 25 elsewhere herein this complaint, Plaintiffs will suffer
 26 irreparable harm unless Defendants are ordered to remove
 27 architectural, non-architectural, and communication barriers at
 28

Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the disability community. Plaintiffs allege there is a national public interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with federal civil rights laws enacted for the benefit of individuals with disabilities.

39. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
CALIFORNIA ACCESSIBILITY LAWS

CLAIM I: Denial Of Full And Equal Access

40. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities due to violations pertaining to the Space Allowance and Reach Ranges,

1 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
2 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
3 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
4 Entrances, Drinking Fountains and Water Coolers, Water Closets,
5 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
6 Handrails, Grab Bars, and Controls and Operating Mechanisms,
7 Alarms, Detectable Warnings, Signage, and Telephones.

8 41. These violations denied Plaintiff's Member and Plaintiff
9 DIANE CROSS full and equal access to Defendants' facility. Thus,
10 Plaintiff's Member and Plaintiff DIANE CROSS was subjected to
11 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
12 Plaintiff's Member and Plaintiff DIANE CROSS was denied full,
13 equal and safe access to Defendants' facility, causing severe
14 emotional distress.

15
16 CLAIM II: **Failure To Modify Practices, Policies And Procedures**

17 42. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere
18 herein this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies, and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiffs and/or others similarly situated in entering
22 and utilizing Defendants' services as required by Civil Code §
23 54.1. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
24 subjected to discrimination in violation of Civil Code § 54.1.

25 CLAIM III: **Violation Of The Unruh Act**

26 43. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiffs and persons similarly
4 situated in violation of Civil Code §§ 51, 52, and 54.1.

5 44. Based on the facts plead at ¶¶ 12 - 28 above, Claims I, II,
6 and III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiffs desire to return to Defendants' places of
18 business in the immediate future. Accordingly, the Plaintiffs
19 allege that a structural or mandatory injunction is necessary to
20 enjoin compliance with state civil rights laws enacted for the
21 benefit of individuals with disabilities.

22 45. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.

24
25 **Treble Damages Pursuant To Claims I, II, III Under The California**
26 **Accessibility Laws**

27 46. Defendants, each of them respectively, at times prior to and
28

1 including, the month of November of 2006, and continuing to the
2 present time, knew that persons with physical disabilities were
3 denied their rights of equal access to all portions of this public
4 facility. Despite such knowledge, Defendants, and each of them,
5 failed and refused to take steps to comply with the applicable
6 access statutes; and despite knowledge of the resulting problems
7 and denial of civil rights thereby suffered by Plaintiffs and
8 other similarly situated persons with disabilities. Defendants,
9 and each of them, have failed and refused to take action to grant
10 full and equal access to persons with physical disabilities in the
11 respects complained of hereinabove. Defendants, and each of them,
12 have carried out a course of conduct of refusing to respond to, or
13 correct complaints about, denial of disabled access and have
14 refused to comply with their legal obligations to make Defendants'
15 public accommodation facilities accessible pursuant to the
16 Americans With Disability Act Access Guidelines (ADAAG) and Title
17 24 of the California Code of Regulations (also known as the
18 California Building Code). Such actions and continuing course of
19 conduct by Defendants, and each of them, evidence despicable
20 conduct in conscious disregard of the rights and/or safety of
21 Plaintiffs and of other similarly situated persons, justifying an
22 award of treble damages pursuant to sections 52(a) and 54.3(a) of
23 the California Civil Code.

24 47. Defendants, and each of their actions have also been
25 oppressive to persons with physical disabilities and of other
26 members of the public, and have evidenced actual or implied
27 malicious intent toward those members of the public, such as
28

1 Plaintiffs and other persons with physical disabilities who have
2 been denied the proper access to which they are entitled by law.
3 Further, Defendants, and each of their, refusals on a day-to-day
4 basis to correct these problems evidence despicable conduct in
5 conscious disregard for the rights of Plaintiffs and other members
6 of the public with physical disabilities.

7 48. Plaintiffs pray for an award of treble damages against
8 Defendants, and each of them, pursuant to California Civil Code
9 sections 52(a) and 54.3(a), in an amount sufficient to make a more
10 profound example of Defendants and encourage owners,
11 lessors/lessees, and operators of other public facilities from
12 willful disregard of the rights of persons with disabilities.
13 Plaintiffs do not know the financial worth of Defendants, or the
14 amount of damages sufficient to accomplish the public purposes of
15 section 52(a) of the California Civil Code and section 54.3 of the
16 California Civil Code.

17 49. Wherefore, Plaintiffs pray for damages and relief as
18 hereinafter stated.
19

20 **DEMAND FOR JUDGMENT FOR RELIEF:**

21 A. For general damages pursuant to Cal. Civil Code §§ 52 or
22 54.3;

23 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
24 each and every offense of Civil Code § 51, Title 24 of the
25 California Building Code, ADA, and ADA Accessibility Guidelines;

26 C. In the alternative to the damages pursuant to Cal. Civil Code
27 § 52 in Paragraph B above, for \$1,000 in damages pursuant to Cal.
28

1 Civil Code § 54.3 for each and every offense of Civil Code § 54.1,
2 Title 24 of the California Building Code, ADA, and ADA
3 Accessibility Guidelines;

4 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
5 Plaintiffs request this Court enjoin Defendants to remove all
6 architectural barriers in, at, or on their facilities related to
7 the following: Space Allowance and Reach Ranges, Accessible Route,
8 Protruding Objects, Ground and Floor Surfaces, Parking and
9 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators,
10 Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
11 Drinking Fountains and Water Coolers, Water Closets, Toilet
12 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
13 Handrails, Grab Bars, and Controls and Operating Mechanisms,
14 Alarms, Detectable Warnings, Signage, and Telephones.

15 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. §
16 12205, and Cal. Code of Civil Procedure §§ 1032 and 1033.5;

17 F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or
18 54.3(a);

19 G. A Jury Trial and;

20 H. For such other further relief as the court deems proper.

21
22 Respectfully submitted:

23 **PINNOCK & WAKEFIELD, A.P.C.**

24 Dated: November 5, 2007

25 By: 

26 THEODORE A. PINNOCK, ESQ.

27 MICHELLE L. WAKEFIELD, ESQ.

28 Attorneys for Plaintiffs

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 144272 - BH
* * C O P Y * *
November 07, 2007
10:45:53**

Civ Fil Non-Pris
USAO #: 07CV2129 CIVIL FILING
Judge.: BARRY T MOSKOWITZ
Amount.: \$350.00 CC

Total-> \$350.00

FROM: OUTERBRIDGE V. MARIE CALENDARS
CIVIL FILING
VISA AUTH# 010451

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. PLAINTIFFS

OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS; and DIANE CROSS, An Individual,
Plaintiffs,

DEFENDANTS

MARIE CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE
CALLENDER'S #254; PACIFIC BAGELS, LLC d.b.a.
BRUEGGARS BAGELS; COURTYARD HOLDINGS, LP; PSS
PARTNERS, LLC; AND DOES 1 THROUGH 10, Inclusive

FILED
07 NOV - 7 AM 10:43
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michelle L. Wakefield, Esq. SBN: 200424
Theodore A. Pinnock, Esq. SBN: 153434
PINNOCK & WAKEFIELD, A.P.C.
3033 Fifth Ave., Suite 410, San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'07 ON 2129 BTM (AJB)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in
Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX

(For Diversity Cases Only)

FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- | | | |
|--|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business
in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business
in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign
Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury- Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Electment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION
UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in
complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE November 5, 2007

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 11/7/07 BH RPT# 144272

Michelle Wakefield